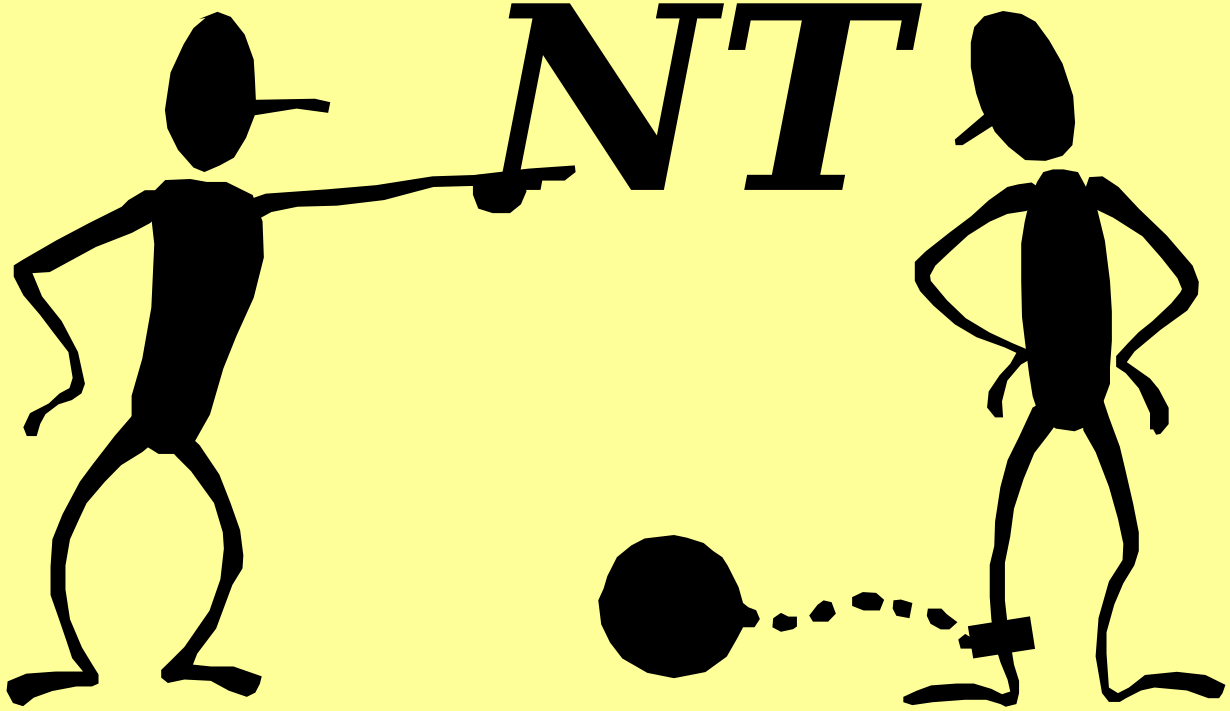
NONJUDICIAL PUNISHMENT

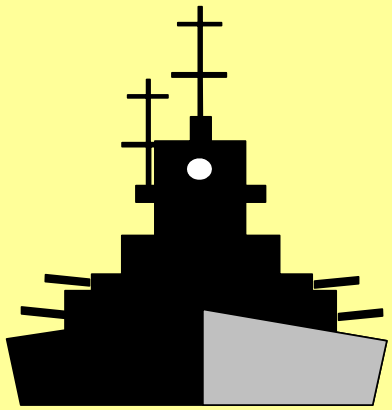


UCMJ ART. 15; MCM Part V; JAGMAN CH. 1 Part (B); MJM CH. 1

Learning Objectives

- **Understand:**
  - **Nature of NJP**
  - **NJP Jurisdiction**
  - **Effect of prior civilian action**
  - **Accused’s NJP rights**
  - **NJP punishments**
  - **NJP appeal procedure**

PURPOSE AND AUTHORITY



NATURE & AUTHORITY

- **Disciplinary Action**
  - **more serious than NPM's**
  - **less serious than CM**
  - **for minor offenses**
- **Terms**
  - **USN/USCG: Mast**
  - **USMC: Office Hours**
  - **USAF/USA: Article 15**

Commanding Officer NJP Authority

- **All Military Members of Command**
- **Jurisdiction determined at time of Mast**
- **CO may not delegate NJP authority**
- **Flag Officer may delegate**

Officer-in-Charge NJP Authority

Enlisted Members Only

– Regardless of OIC's r

EMBARKED UNITS

JAGMAN 0108

- **Unit Attached/Embarked on Ship:**
  - **CO defers NJP authority to CO of the ship**
  - **Example: Squadrons on CVN's**

- **Unit Embarked only for Transportation:**
  - **CO retains NJP authority**
  - **Ship CO also has NJP author**

PUNISHABLE OFFENSES

OFFENSES PUNISHABLE

MCM, Part V

- **Theory: NJP is for "minor" offenses**
  - **Major: punished by DD or >1 year confinement**
  - **Minor: everything else**

- **Reality: CO has VERY BROAD**

FORMER PUNISHMENT

- **Major Offense**
  - **Credit for NJP**
- **Minor Offense**
  - **Bar to CM**
- **MJ Decides**

PRIOR CIVILIAN ACTION

JAGMAN 0124, MJM 1.A.7.c

- **FEDERAL COURT**: Bar to NJP/CM
- **STATE/FOREIGN COURTS**:
  - No Double Jeopardy Issue
  - Requires Permission
    - **NJP/SCM: GCMCA consent**
    - **SPCM/GCM: OJAG consent**

STATUTE OF LIMITATIONS

TWO YEARS FOR NJP

FROM DATE OF OFFENSE TO DATE OF PUNISHMENT

ACCUSED'S RIGHTS REGARDING NJP

PRIOR TO NJP HEARING

MEMBER INFORMED:

- That CO is considering imposing NJP
- Charges
- Evidence
- Right to Refuse NJP, if applicable
- Right to Personal Appearance
- Rights at the Hearing

RIGHT TO REFUSE MAST

- **ALL members have right to refuse Article 15 punishment, UNLESS:**
  - **THEY ARE ATTACHED TO OR EMBAR A VESSEL**

BOOKER RIGHTS

***U. S. v. BOOKER*, 5 M.J. 238 (1977)**

***U. S. v. MATTHEWS*, 6 M.J. 357 (1979)**

- **ISSUE: Use of prior SCM or NJP on sentencing at later court-martial.**
- **HOLDING: When right to refuse exists, member has right to assistance of counsel in making informed decision.**

No "BOOKER RIGHTS" = No Later Use!

U.S. v. EDWARDS
46 M.J. 41 (CAAF 1997)

- **ISSUES:**
  - **Is a ship in dry dock a "vessel" within the meaning of the vessel exception?**
  - **Use of prior NJP on sentencing at later CM, when NJP held without *Booker* rights by a ship in dry dock.**

U.S. v. EDWARDS

- **LESSONS:**
  - **The less "operational" a ship is, the greater the chance that it does not fit into the "vessel exception"**
  - **Creates no new right at NJP**
  - **Case only impacts use of NJP in aggravation at later Court**

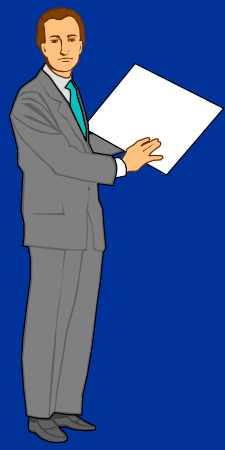
DISCIPLINARY REVIEW BOARD and EXECUTIVE OFFICER INQUIRY

- Unique to the Navy
- No requirement for DRB or XOI
- XO Authority:
  - No punishment power
  - Forward to CO, Dismiss

RIGHTS AT HEARING

- To be Present
- To Remain Silent
  - Miranda Warnings?
- To a Personal Representative
  - Lawyer?
- To Examine the Evide

RIGHTS AT HEARING



- To present a defense
  - Reasonably Available Witnesses
- To present E & M evidence
- To a public hea
  - Private Hearing?

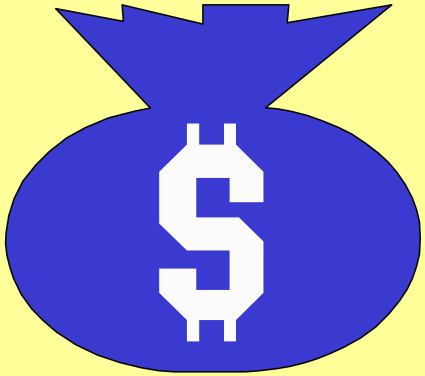
ADMINISTRATIVE MATTERS

- **Script in JAGMAN A-1-(e)(1) and Enclosure (1) of MJM**
- **Rules of Evidence Do Not Apply**
  - **Except for Privileges**
- **Standard: Preponderance of Evidence***

ADMINISTRATIVE MATTERS

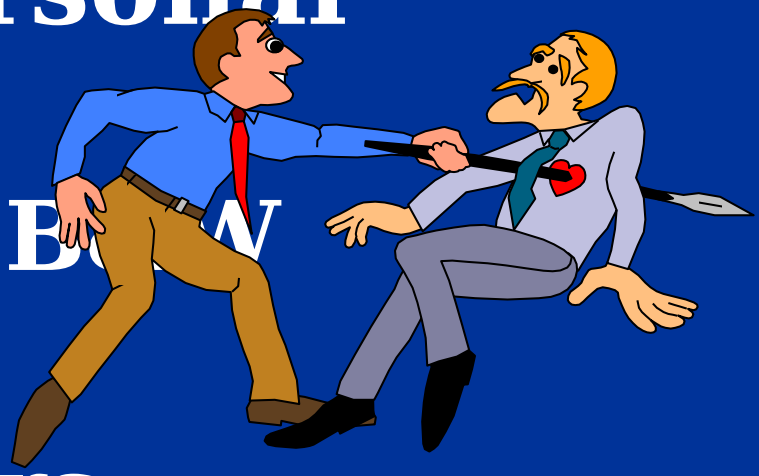
- CO retains full range of disposal options
- Publication of results
  - Full results okay to military members
  - No names if non-military could see it
  - POW Notes

PUNISHMENTS



PUNISHMENTS

- Reprimand or Admonition
- Reduction in Rate
- Forfeiture of Pay
- Restraint on Personal Liberty
  - Confinement on Bread & Water
  - CCU
  - Arrest in Quarters



REPRIMAND

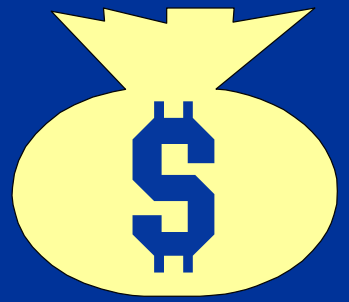
- A PUNITIVE chewing out!!!
- **Enlisted**: Oral or written
- **Officer**: Must be in writing
  - Punitive Letter of Reprimand
  - Sample: JAGMAN A-1-g and MJ Enclosure (6b)
- May be combined w/ all other punishments

REDUCTION IN RATE

- **ONLY IMPOSED ON ENLISTED MEMBERS**
- **Only for pay grades:**
  - **USN & USCG: E-6 & Below**
  - **USMC: E-5 & Below**
- **Maximum of ONE PAYGRADE!!!!**
- **May be combined with other punishments**

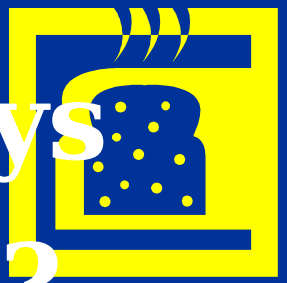
FORFEITURE OF PAY

- **<u>Maximum</u>: 1/2 of month's pay x 2**
  - **O-3 CO's & OIC's: 7 Days**
- **<u>Officers</u>: Only if imposed by 0-7+**
- **If reduced at same time, max FF based on reduced pay grade**
- **May be combined with all other punishments**



CONFINEMENT WITH BREAD & WATER

- **ONLY E-3 & below!**
- **Not authorized punishment in USCG**
- **ONLY while attached to or embarked on ship!**
- **ONLY for max of 3 days**
- **Combine Punishment?**
  - ✔**Yes: Non-Restraint**



CORRECTIONAL CUSTODY UNIT

- **Only on E-3 & below**
- **MAX: 30 Days**
  - ✔**O-3 CO's & OIC's: 7 Days**
- **Combined Punishment?**
  - ✔**Yes: Non-Restraint**
  - ✔**No: Restraint**

CORRECTIONAL CUSTODY

Is this any way to save a sailor? 12

CCI

ARREST IN QUARTERS

"Arrest" Is a Military Term of Art

- Only Imposed on Officers
- Only Imposed by Flag Officer
- Combined Punishment?
  - ✔Yes: Non-Restraint
  - ✔No: Restraint

RESTRICTION

- Restricted to limits of base/ship
- MAX:
  - Enlisted: 60 days, 45 with Extra Duties
  - Officer: 30 days
    - 60 days if imposed by Flag
    - 15 days if imposed by O-3 or below CO
  - OIC: 14 days

EXTRA DUTIES

Only Imposed on Enlisted Members

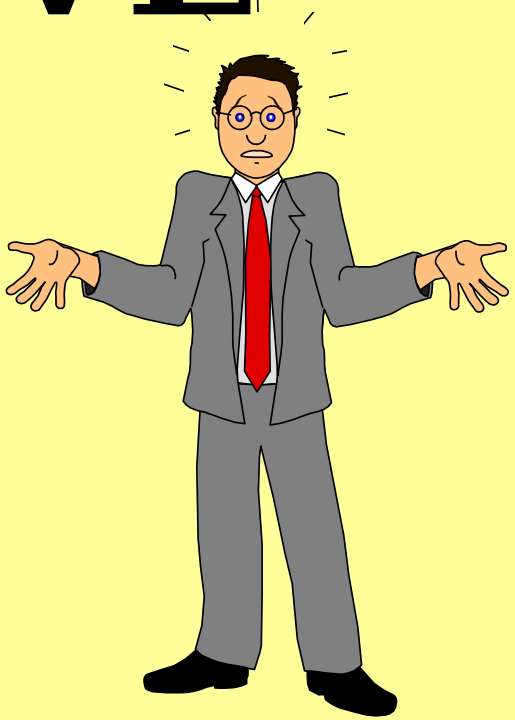
Runs Concurrently When Combined with Restriction

45 Days Max

MAXIMUM PUNISHMENTS

- **Use NJS Max Punishment Chart!!!**
- **Impacted by:**
  - **Imposing Officer's Ran**
  - **Service Member's Rank**
  - **Ship or Shore?**
  - **How some punishments can and cannot combine with others**

APPEALS & CORRECTIVE ACTION



NJP APPEALS

REVIEW AUTHORITY

USN: ISIC or Area Coordinator with Judge Advocate

USMC/USCG: Chain Of Command with Judge Advocate

NJP APPEALS

SUBMISSION PROCEDURE

- **Grounds:**
  - **Unjust**
  - **Disproportionate**
- **Timing**
  - **5 Working Days from NJP (USCG – 5 calendar days)**
  - **Extensions may be granted**

NJP APPEALS

STAY OF PUNISHMENT

IF ACCUSED:

- **Files timely appeal**
- **Requests stay of punishment**
- **Appellate authority fails to act w/in 5 days of submission**

RESTRAINT AND EXTRA DUTIES MUST BE STAYED

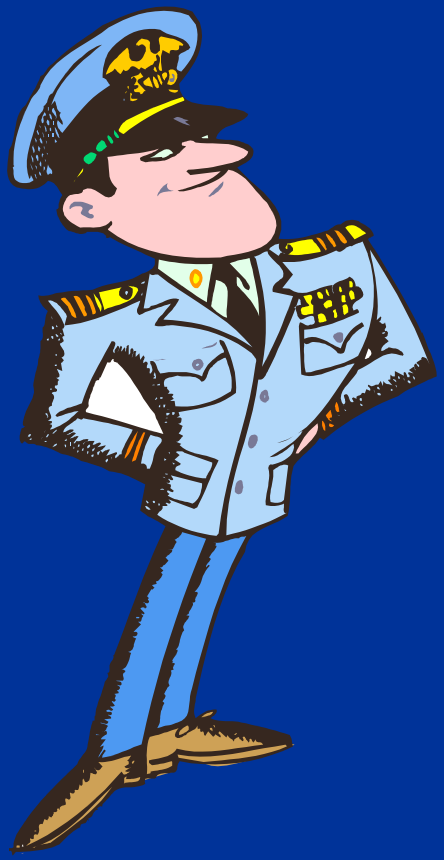
NJP APPEAL

REVIEW AUTHORITY

- Reviewed for abuse of discretion
- Referred to JAG for recommendation
- May order a new hearing or take corrective action
- If new hearing, punishment cannot exceed first NJP

CORRECTIVE ACTION

AUTHORITY



- CO who imposed punishment
- Successor in Command
- Subsequent CO after transfer of member
- Review Authority

TYPES OF CORRECTIVE ACTION

Generally, must be taken w/in 4 months of execution of punishment

- **Set Aside**
- **Remission**
- **Mitigation**
- **Suspension – max 6**

KEY TAKEAWAYS

- **When may NJP be imposed and upon whom**
  - Effect of prior punishment

- **Lawful punishments**
  - Limitations of punishments
  - Combination of punishments
  - Use punishment chart

- **NJP Appeals**
  - Grounds
  - Timeframe